

© BELL SOUTH

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J. Richard Teel
Vice President-Regulatory and
Consumer Affairs

Via Facsimile

December 17, 1996

Ms. Riley M. Murphy
General Counsel
American Communications Services, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701

Dear Riley:

I called your office today in response to your letter of December 11, 1996. Unfortunately, you were out of the office and we did not have a chance to talk.

I want to assure you that BellSouth is highly desirous of resolving the operational issues detailed in your letter. Indeed, BellSouth has a team of over twenty people working to fix these problems as quickly as possible.

Please call me at your earliest convenience so that we can discuss BellSouth's efforts to correct the current problems. In the meantime, please accept my apologies on behalf of BellSouth for any inconvenience ACSI may have experienced.

Yours very truly,



Richard Teel
Vice President-Regulatory



December 18, 1996

Via Facsimile

Mr. Jerry Hendrix
BellSouth Telecommunications, Inc.
675 N. Peachtree St., N.E.
Atlanta, Georgia 30375

Dear Jerry:

To follow up on our conversation of Thursday, December 12, 1996, it appears that virtually all of the problems addressed in ACSI's letter from Riley M. Murphy to Mr. Richard Teel dated December 11, 1996 ("December 11 Letter") remain unresolved. Furthermore, it appears that, despite further testing, BellSouth has failed to establish the procedures required to carry out its duties under the Interconnection Agreement between ACSI and BellSouth signed on July 25, 1996 ("Agreement").

In our conversation of December 12, 1996, as well as prior conversations, it became clear that BellSouth is unable to implement key portions of the Agreement relating to unbundled loops at this time. In previous conversations, ACSI had requested timeframes for: a) the time between the placement of an order by ACSI and firm order confirmation by BellSouth and b) the time from the placement of an order by ACSI and cutover of the customer to ACSI. Prior to December 12, 1996, BellSouth would not provide such timeframes. On December 12, 1996, you committed to: a) 48 hours between the placement of an order and firm order confirmation and b) 5 days from the placement of an order by ACSI to cutover. Of course, these timeframes have not been put into practice in ongoing tests, and ACSI cannot begin cutting over customers until tests have assured that ACSI customers will not be disconnected. Furthermore, any agreement we may reach as to interim timeframes or interim BellSouth performance goals does not excuse BellSouth from full and immediate performance of the Interconnection Agreement.

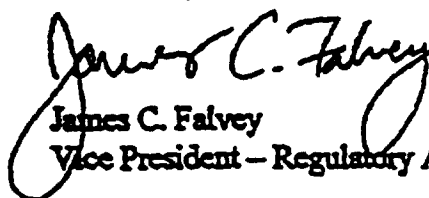
We agreed that these interim timeframes should be memorialized in writing. We also agreed that BellSouth would work towards implementing and improving upon these timeframes as required by the Agreement. We also agreed to formalize in writing expedite and escalation procedures pursuant to Section C10 of the Agreement. As stated

in the December 11 Letter, existing expedite and escalation procedures are entirely lacking.

In the meantime, statements by senior BellSouth personnel, including Executive Vice President Ann Andrews, that BellSouth is not required to perform tasks specifically delineated in the Agreement, as well as the ongoing failings of existing unbundled loop processes, are cause for grave concern. ACSI can only conclude that BellSouth has failed to devote sufficient resources to the implementation of unbundled loop processes. Throughout this process, putative ACSI customers remain BellSouth customers, diverting what should be ACSI revenues to BellSouth.

Brenda Renner and I will be prepared to discuss the memorializing of escalation, expedite, and certain timeframes later today on our 2:30 p.m. conference call.

Sincerely,



James C. Falvey
Vice President - Regulatory Affairs

cc: Riley M. Murphy
Richard Robertson
Brenda Renner
Brad Murscheffknaus, Esq.
Craig Dowdy, Esq.

BELLSOUTH
TELECOMMUNICATIONS ®

Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

December 19, 1996

Mr. James C. Falvey
Vice President - Regulatory Affairs
ACSI
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701

Dear Mr. Falvey:

Pursuant to your request in your December 18, 1996 letter, below is a summary of the timeframes BellSouth and ACSI agreed to during our conversation of December 12, 1996.

BellSouth will make its best effort to provide ACSI with a Firm Order Confirmation within 48 hours of the receipt of a "good" order, meaning a complete order which BellSouth is able to process. Furthermore, BellSouth agrees that it will coordinate a cutover of a BellSouth customer to ACSI within five days (for non system services such as 1FBs and 1FRs) of the receipt of a "good" order from ACSI.

Based on the above agreed timeframes, BellSouth proposes the following language be incorporated into the existing agreement:

IV. Access to Unbundled Network Elements

C. Order Processing

C.9 - When available to any other telecommunications carrier or other customer, BellSouth shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Center (LSC) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements. BellSouth will make its best effort to provide ACSI with a Firm Order Confirmation within 48 hours of receipt of a complete order by BellSouth.

Mr. James C. Falvey
December 18, 1996
Page 2

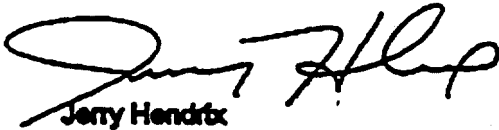
D. Conversion of Exchange Service to Network Elements

D.1 With the exception of circumstances beyond BellSouth's control, BellSouth will
onboard subscribers to ACSI within five days of receipt of a complete order from
ACSI. The five day time frame will be measured from the date upon which BellSouth
receives a complete order from ACSI to the date of customer delivery

Jim, as we discussed during our conversation on Wednesday, December 18, 1996, I would like to include the benefits of the resulting processes from all current activities and I will target to provide proposed contract language for N.C.10 (Expedite and Escalation) to you by December 23, 1996.

I look forward to hearing from you, please give me a call at (404) 529-8533 and we can discuss further.

Sincerely,



Jerry Hendrix
Director - Interconnection Services/Pricing

**PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AMERICAN COMMUNICATIONS SERVICES, INC.)	
Complainant)	
)	File No. E-97-09
v.)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
Defendant)	

**REPLY BRIEF OF
AMERICAN COMMUNICATIONS SERVICES, INC.**

**AMERICAN COMMUNICATIONS
SERVICES, INC.**

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DATED: June 2, 1997
(Public Version filed
June 13, 1997)

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**PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED**

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v.)	
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BELLSOUTH TELECOMMUNICATIONS, INC.)	
Defendant)	

**REPLY BRIEF OF
AMERICAN COMMUNICATIONS SERVICES, INC.**

American Communications Services, Inc. ("ACSI"), by its undersigned counsel, respectfully submits its reply brief concerning the formal complaint brought by ACSI against BellSouth Telecommunications, Inc. ("BellSouth").

INTRODUCTION AND SUMMARY

It is undisputed that ACSI's new local service customers experienced significant service disruptions when switching from BellSouth to ACSI. One customer, Corporate Center, was put out of service for over 24 hours in late November 1996 before the attempted installation was abandoned. Jefferson Pilot and Mutual Life Insurance were out of service over four hours each, and each discovered that BellSouth was not forwarding calls to their new (ACSI) telephone numbers. Several other customers, Joseph Wiley, Cullen &

Associates, and Carrie G. Chandler, were disconnected for lengthy periods at the same time that ACSI began raising these implementation problems with BellSouth. Moreover, although BellSouth has attempted to improve its performance, it admits that several additional customers were "disconnected in error" (BellSouth Brief at 25) in February and

BellSouth details in its brief additional admitted deficiencies in its systems that were precisely the cause of the disruptions ACSI experienced (BellSouth Brief at 23-24).

BellSouth advances three arguments to avoid these facts. First, it claims that the Commission is powerless to act regardless of the errors it committed because unbundled loops pertain to wholly intrastate services beyond the FCC's jurisdiction. Second, it claims that the disruptions actually were ACSI's fault, claiming ACSI should have stayed out of the market while it conducted "joint testing" to BellSouth's satisfaction and asserting several alleged errors by ACSI in implementing the orders. Third, BellSouth contends that it has not violated the Act because delays in provisioning unbundled loops to ACSI are not violations of the Act.

As shown below, each of these arguments is without merit. BellSouth knew the Act obligated it to provide interconnection and access to unbundled loops to competitors such as ACSI. It made detailed representations in the Interconnection Agreement that it could provision loops at parity with service to BellSouth end users and within a standard five-minute cutover window. It began implementation with ACSI immediately after signing the Interconnection Agreement, and

¹ See ACSI Brief, App. 7.

BellSouth simply failed to deliver when the time came. Installation was routinely delayed for substantial periods of time. Customers were put out of service for hours, and were unable to receive inbound calls because SPNP was not coordinated with the loop orders. Even after service was established, customers inexplicably suffered after-the-fact disconnections. These failures by BellSouth forced ACSI to suspend its submission of loop orders in order to protect its goodwill and to scale back the pace of orders once BellSouth began provisioning loops again. The gravity and extent of BellSouth's failures has significantly harmed ACSI and the introduction of local competition in the BellSouth region. The Commission should grant ACSI's complaint and hold BellSouth liable for its failure to fulfill its obligations to ACSI.²

I. BELLSOUTH'S CONTENTION THAT THE COMMISSION LACKS JURISDICTION IS MERITLESS

Not surprisingly given the devastating factual record against it, BellSouth would rather that this Commission not hear ACSI's complaint at all. However, BellSouth's contentions that the Commission lacks jurisdiction (BellSouth Brief at 26-30) are entirely without merit.³

First, as the Commission found in its *Interconnection Order*, Section 251 affirmatively grants it jurisdiction over interconnection and unbundled loops. This

² On Friday afternoon, May 30, 1997, BellSouth produced additional responsive documents it states were generated in late April and early May of this year. ACSI has not had a chance to fully examine BellSouth's May 30 document production and reserves its right to file supplemental material discussing these documents.

³ In addition, BellSouth argues that ACSI's complaint does not pertain to "interconnection" as defined in Section 251(c)(2) and that ACSI has not established a prima facie case of bad faith. These arguments were addressed fully in ACSI's initial brief (at 33-38) and will not be discussed further in this Reply.

unambiguously extends to intrastate facilities and services. Section 251(c)(2) requires incumbent LECs to provide interconnection "for the transmission and routing of telephone exchange service," a service that primarily is intrastate.⁴ Similarly, Section 251(c)(3) requires incumbent LECs to offer the piece-parts of their networks -- unbundled network elements -- to competitors, even though these elements almost always will be physically intrastate.⁵ Moreover, both sections require the incumbent LEC to provide interconnection and access in accordance with the terms and conditions of its approved interconnection agreements. Thus, as the Commission already concluded, Section 251's explicit grants of authority take precedence over any implied limitations in the Act's statutory scheme.⁶ Because Section 251 extends to intrastate services and facilities, the Commission has jurisdiction to hear Section 208 complaints alleging violations of the provisions of Section 251.

Even if Section 251 were read to apply only to interstate matters, the Commission still would have jurisdiction over ACSI's complaint. Unbundled local loops are physically intrastate, but can be used to provide intrastate, interstate and enhanced services, including interstate access, interLATA long distance and Internet services. Neither Section 2(b) nor

⁴ 47 U.S.C. § 251(c)(2).

⁵ *Id.*, § 251(c)(3).

⁶ *Interconnection Order*, ¶ 93; *see also* ¶ 87 (finding "strong evidence" that the local competition provisions of the Act were intended to apply to both intrastate and interstate matters). Because of these explicit provisions of Section 251, the analysis of *Louisiana PSC* is inapplicable to interpretation of Section 251. The Supreme Court's decision in *Louisiana PSC* interpreted the Commission's statutory power under the Communications Act *before* Congress added the provisions of Section 251. With Section 251's clear purpose of advancing competition in local exchange services as a means to enhance competition in all telecommunications market, Congress has altered the jurisdictional landscape upon which *Louisiana PSC* was premised.

Section 221(b) limit the Commission's authority over interstate services, even when the facilities or services used to provide them are purely intrastate.⁷ The D.C. Circuit's decision in *NARUC v. FCC* addresses the same issue raised by BellSouth, and is controlling here.⁸ *NARUC* involved WATS services connecting two locations entirely within a single state, and purchased from intrastate tariffs, but used by a carrier as one leg of an interstate telephone transmission. Several states, relying on Sections 2(b) and 221(b) as BellSouth does in its Brief, argued that the Commission was prohibited from regulating these services because they were purely intrastate. The Court rejected these arguments, finding that the Commission's jurisdiction extended to "all 'facilities' and 'services' used at any point in completing an interstate telephone call."⁹ "[T]he physical location of telecommunications facilities," the Court observed, "is unimportant" in answering the jurisdictional question.¹⁰ Moreover, the Court concluded that Section 221(b) "was merely intended to preserve state regulation of local exchanges that happen to overlap state lines."¹¹ Nothing in that section limited the FCC's jurisdiction over intrastate facilities that were used in providing an interstate call. Therefore, the Court concluded, "The Commission clearly had jurisdiction" over the intrastate WATS services at issue in *NARUC*.¹²

⁷ See, e.g., *NARUC v. FCC*, 746 F.2d 1492 (D.C. Cir. 1984).

⁸ *Id.* at 1499.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1500 (quoting *Computer & Communications Industry Association v. FCC*, 693 F.2d 198, 216 (D.C. Cir. 1982)).

¹² *Id.* at 1500-01.

NARUC is consistent with the Supreme Court's decision in *Louisiana PSC*.¹³

Louisiana PSC addresses the Commission's power to step into the regulation of intrastate services when separate interstate and intrastate spheres can be established. It says nothing, however, about the FCC's jurisdiction over intrastate facilities or services when they are used for *interstate* purposes. Indeed, *Louisiana PSC* accepted without comment that the FCC could prescribe depreciation rates for intrastate facilities to the extent they are used to provide interstate services.¹⁴

Like *NARUC*, ACSI's complaint relates to facilities and services that are used to provide interstate services. A local loop gives the purchaser access to the facility for *all* communications that may be provided through the facility, including both local exchange services and exchange access services.¹⁵ While it frequently, but not always, is true that unbundled loops will be located wholly within a single state (BellSouth Brief at 27),¹⁶ this fact is irrelevant. Because the facilities are used to provide interstate services also, the Commission has jurisdiction over BellSouth's provisioning of them.¹⁷

¹³ *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986).

¹⁴ *Id.* at 375-76 (noting that it was possible to apply different rates of depreciation to the same telecommunications plant after separations).

¹⁵ *Interconnection Order*, ¶ 380 (defining an unbundled loop); *see also*, *Reconsideration Order*, 11 FCC Rcd. at 13048 (unbundled loops may not be ordered solely to provide exchange access services).

¹⁶ For example, the Columbus, Georgia Serving Wire Center also encompasses local loops connected to locations in Phenix City, Alabama. *See* BellSouth Doc. No. 02411 (App. 15 to ACSI Brief).

¹⁷ Similarly, the Georgia Commission has jurisdiction over unbundled local loops to the extent they are used to provide intrastate services. Accordingly, both this Commission and the Georgia Commission have jurisdiction to hear the complaints brought by ACSI before them.

II. BELLSOUTH CANNOT AVOID RESPONSIBILITY FOR ITS FAILURES AND THE SHORTCOMINGS IDENTIFIED IN THE INDEPENDENT AUDIT BY BLAMING ACSI

BellSouth's second line of defense is to blame ACSI for acts or failures it claims contributed to the service disruptions. These claims, however, rely upon outright mischaracterizations, absurd exaggerations and distracting irrelevancies that do not begin to justify BellSouth's inexcusable failure to prepare to meet its obligations under the Act and its promises under the Interconnection Agreement. Often, the alleged errors are refuted by BellSouth's own admissions and ACSI's responses to specific factual assertions made by BellSouth are provided in Appendix 2 attached hereto. Only a few principal contentions will be discussed in more detail below.

A. BellSouth Cannot Use the Absence of Joint Testing as a Pretext to Avoid Preparing to Meet its Obligations Under the Agreement

There is no question that ACSI submitted test orders with BellSouth's full knowledge and awareness. After the fact, BellSouth now claims that the testing was not sufficient to begin cutting over live customers. However, BellSouth cannot now hide behind the pretext of joint testing to absolve it from its own failure to prepare adequately to process unbundled loop orders and to provision unbundled network elements to ACSI. It also provides no explanation for why BellSouth is unable to meet the Interconnection Agreement's standards in April 1997 -- over four months after ACSI began submitting orders (ACSI Brief at 29). Indeed, given the

(ACSI Brief at 18-21), it is inconceivable that any joint testing period would have made a significant difference in this case.¹⁸

ACSI's entry as a competitor cannot be held hostage to BellSouth's own pace and desires, particularly when BellSouth refused to even ask for the testing it now claims was essential. BellSouth Response to ACSI Interrogatory No. 11. BellSouth knew all along that ACSI intended to submit orders in Columbus, Georgia as soon as possible (ACSI Brief at 10-11). It also had

(*Id.* at 12). Despite these explicit warnings of ACSI's intent, BellSouth chose not to request extensive testing of its provisioning processes. Instead, it chose to proceed with implementation of the Agreement and

ACSI cannot now be held responsible for BellSouth's decision simply because BellSouth proved woefully unable to accept and process orders.

Even though BellSouth never requested formal joint testing, ACSI conducted its own tests, and did so with BellSouth's full knowledge and awareness (ACSI Brief at 12). BellSouth now labels those tests a total failure, and claims ACSI never should have proceeded with additional orders to BellSouth (BellSouth Brief at 15-17). The errors BellSouth alleges, however, are not supported by the facts and do not undermine ACSI's decision to go forward based upon the results of the tests. First, BellSouth's suggestion that it thought ACSI's request was for access lines, not unbundled loops, is preposterous. There

¹⁸ The testimony of MFS witness Meade before the Georgia PSC, which is relied upon by BellSouth for its claim that testing is "essential," confirms the same type of "back office" deficiencies that have plagued the orders ACSI submitted. Meade Testimony at 12.

is no evidence BellSouth processed this order like an access request, nor is there any evidence that ACSI's request to unbundle a DS0 loop confused anyone.¹⁹ Second, while it is true that ACSI had to supplement its order on November 15 to provide a different Network Channel Code, that supplementation was the result of BellSouth's own change in the codes, which occurred *after* ACSI submitted the test order. BellSouth Response to ACSI Interrogatory Nos. 2 and 7 (BellSouth updated its NC/NCI codes between November 14 and 19). Finally, although BellSouth claims the order was not completed until November 27, ACSI's records indicate it was completed on November 22, in less than one hour. *See* Third Renner Dec. ¶ 10 and Attachment A; ACSI 0395 (attached as Exhibit C to BellSouth Brief). The documentation BellSouth relies upon for the November 27 complete date clearly reveals that dial tone was established on both circuits on November 22 and that the new numbers "seem to be OK." BellSouth Response to ACSI Interrogatory No. 17 (Entry for 11/22 at 1829). A minor SPNP problem is indicated by the entry, but no further mention is made of its resolution. *Id.* The *only* entry on November 27 merely states that the order is "posted" complete, but does not indicate that any other actions were taken on that date. *Id.*

Because ACSI's test order was completed on November 22 without significant incident, ACSI reasonably determined that it could proceed ahead with its orders in Columbus, Georgia. ACSI 0395.

¹⁹ Moreover, it was clear in context that ACSI wanted unbundled loops for these lines. ACSI submitted the order to BellSouth's LCSC (the processing center for unbundled network elements) and clearly indicated an SPNP order was associated with the request.

B. Any Minor Errors by ACSI Do Not Excuse BellSouth's Failure to Prepare to Process ACSI's Orders

ACSI submitted evidence of a series of ongoing problems it has experienced with BellSouth's performance under the Act and the Interconnection Agreement. This evidence illustrates that BellSouth's problems are pervasive and systemic, and go far beyond any isolated "start-up" problems. Although BellSouth has alleged a number of errors on ACSI's part, the possibility of minor errors by ACSI do not explain the pervasive deficiencies ACSI has experienced and

For example, BellSouth raises a number of sweeping accusations, such as its attempt to fault ACSI for placing three customer orders on a single day (at a time when

) and the exaggerated and misleading "unresolved" ACSI issues,²⁰ but makes only three claims associated with specific orders submitted by ACSI.

These few specific assertions cannot explain away the body of BellSouth's failures. Its own documents reveal that the service disconnections experienced by Joseph Wiley, Cullen & Associates, and Carrie G. Chandler resulted from the improper design of BellSouth's order processing procedures, irrespective of any action on ACSI's part. *See* BellSouth Response to ACSI Interrogatory No. 12 (service order writing procedures caused the "automatic release of the disconnect order" at FDT time, even if delays were encountered in the cutover process); *see also*, BellSouth Brief at 23. Moreover, although BellSouth acknowledges its own error in disconnecting Country's Barbecue, Jefferson Pilot and Columbus Tire (BellSouth Brief at 25), it offers no explanation for the error, and does not

²⁰ See Appendix 2 for ACSI's response to these and other non-specific allegations regarding ACSI's loop orders.

dispute that these service disconnections caused two of the three affected customers (Country's Barbecue and Jefferson Pilot) to return to BellSouth local service.

BellSouth's specific allegations of error are confined to the three orders for which it attempted installation on November 27, 1996 (Corporate Center, Jefferson Pilot and Mutual Life). Each claim pertains only to one order, and, as shown below, is entirely without merit.

Corporate Center: BellSouth claims that ACSI "pressed ahead" with the Corporate Center order even though as of November 26 it had not received a Firm Order Confirmation ("FOC") from BellSouth (BellSouth Brief at 17, 20). In fact, ACSI escalated the Corporate Center request to Ann Andrews on November 26, and received a verbal FOC from Lynn Smith. See Appendix 2. Nevertheless, it is hardly unreasonable for ACSI to ensure that it is prepared to go forward on the 27th, in case BellSouth attempted to do so (which it in fact did). Ms. Murrah's instruction to "work the attached orders" simply was a reasonable precaution on ACSI's part to ensure that it would not be the cause of any installation delays.

Mutual Life: In an assertion that erroneously characterizes its own interrogatory response as an "ACSI document," BellSouth asserts that an "ACSI switch problem" delayed the Mutual Life cutover for some unspecified duration (BellSouth Brief at 20). The document BellSouth cites for this proposition, however, does not support BellSouth's broad claim. BellSouth appears to be referring to a notation recorded on 11/27 at 1220 which states, "We were not getting dial tone from [ACSI's] switch. He [Craig from ACSI] will check translations and call back." BellSouth Response to ACSI Interrogatory No. 17 (PON I00045CMB). Although it is impossible to tell from this sketchy notation whether the "no dial tone" condition resulted from ACSI's switch or a problem with BellSouth's connection to

it, later entries indicate that this problem (whatever its origin) lasted no more than 22 minutes. At 1246 the same day, BellSouth's notation reports that "Craig" called back to report a SPNP problem with the line that was cutover, a condition that could not have been discovered if the loop remained out of service. *Id.* The SPNP problem took almost 5 hours to resolve (compare notations on 11/27 at 1246 with 11/27 at 1711), dwarfing any problems encountered in establishing the initial dial tone.

Moreover, BellSouth's own interrogatory responses reveal that the SPNP problem encountered on this order and on other ACSI orders resulted from improper BellSouth order procedures, not from any failure by ACSI. As BellSouth explained, prior to December 1996, BellSouth's processing of SPNP orders at the same time as unbundled loop orders did not "facilitate the coordination of the installation and disconnection" of service to the customer. Instead, as a result of BellSouth's procedures, "the order to disconnect existing service would be worked on the due date (usually early in the day) but would not be held until the [Frame Due Time], when the unbundled loop was to be installed." BellSouth Response to ACSI Interrogatory No. 12; *see also* BellSouth Brief at 23. Customers calling Mutual Life's old (BellSouth) number received an intercept message stating that service was disconnected -- rather than having their calls forwarded to the new number -- because BellSouth had in fact disconnected the customer well before installing the unbundled loop instead of coordinating the cutover to happen at the same time.

Jefferson Pilot: Although BellSouth claims that an unspecified "ACSI problem" caused this customer to be disconnected for approximately two hours (BellSouth Brief at 20), the document it cites for this proposition does not support the claim. The document (ACSI 0308) is

It does not appear related to the installation of ACSI's unbundled loop order at all.

Indeed, ACSI's order processing records make no mention of an ACSI problem occurring during cutover. ACSI 0446, attached as Appendix 3.

C. BellSouth's Complaint About the Stenciling of ACSI's Collocated Equipment is a Red Herring

As ACSI explained in its initial brief (ACSI Brief at 29-30), there is no evidence that this error had a material effect on BellSouth's failed installations. BellSouth claims that ACSI's vendor "mis-stenciled" the distribution frame. BellSouth's version of these facts paints the problem as an ACSI error, when in fact it was a BellSouth mistake. As a threshold matter, the only order that BellSouth claims this disrupted is Corporate Center (BellSouth brief at 21), and the casual nexus for that order is not supported by the record. BellSouth's witness in a recent Louisiana proceeding admitted that not all of BellSouth's failings can be traced to this one issue. Testimony of Alphonso Varner at 195 (La PSC Docket U-27252, May 19, 1997).

More importantly, the problem was not an ACSI stenciling problem, but in fact a problem with the BellSouth documentation that ACSI received from BellSouth. ACSI and ACSI's vendor²¹ performed their work based on this non-industry standard documentation, which BellSouth later had to replace. Specifically, BellSouth provided a design layout record ("DLR") to ACSI with the wrong TOTIE numbering sequence. BellSouth's documentation

²¹ ACSI's vendor was a BellSouth-approved vendor.

dictates how the equipment will be identified (or "stenciled"). BellSouth assigned 2 channels for each TOTIE assignment, contrary to the industry standard of one channel for each TOTIE assignment. This was not apparent from the initial documentation. Once BellSouth's approach became clear, BellSouth faxed to Pamela Jones at ACSI documentation that explained BellSouth's non-industry standard approach. As BellSouth states, "BellSouth developed drawings detailing the collocation arrangement and how to read the DLRs. These drawings were faxed to Pam Jones at ACSI. BellSouth then discussed with Pam how to associate the TOTIE carriers to the slot and port on the equipment." BellSouth brief at 22. The reason this explanation was necessary was because BellSouth departed from the industry standard. Significantly, it was BellSouth's approach that departed from industry standard, as confirmed by ACSI's industry technicians familiar with the switch, and it was this approach that was the root of the entire problem. In fact, ACSI has had to have a conversion table developed to support BellSouth's non-industry standard approach to support ACSI's customers in the BellSouth region.

In any event, even if these non-standard identifications were entirely attributable to ACSI, it would tell only a small part of the story. It provides no excuse for BellSouth's failure to implement SPNP coincident with an unbundled loop installation. It does not explain

It also provides no defense for the erroneous disconnections of Joseph Wiley, Cullen & Associates, or Carrie G. Chandler in December, the unexplained disconnections of Country's Barbecue, Jefferson Pilot and Columbus Tire in February, or BellSouth's inability to meet standard 5 minute cutover intervals in April 1997. If improper stenciling was the cause of the initial

disruptions, one must ask why BellSouth's April performance continues to be so poor.

Obviously, whatever effect "stenciling" might have had, it is overshadowed by BellSouth's own refusal or failure to adequately prepare its LCSCs and its inability to control its order processing procedures.

III. BELLSOUTH'S CONTINUING VIOLATION OF THE PARITY OBLIGATION REQUIRES IMMEDIATE ACTION

In its final attempt to evade responsibility, BellSouth pronounces its failures as only "minor disruptions and delays" that do not amount to a failure to provide service under the Act (BellSouth Brief at 45). BellSouth misreads both the Act and the Interconnection Agreement.

Section 251 requires that interconnection and access to unbundled elements be provided on rates, terms and conditions that are "just, reasonable and nondiscriminatory."²² The Interconnection Agreement makes these requirements more explicit, requiring that BellSouth to provide ACSI "installation and service intervals [that are] the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers." Interconnection Agreement, Section IV.E.3. By providing ACSI with substandard unbundled local loops, by providing the necessary installation and interconnection after unreasonable and unacceptable disruptions, and by failing to provision a commercially reasonable number of unbundled loops, BellSouth has denied ACSI interconnection and access to unbundled loops that is at parity with that which it provides to

²² 47 U.S.C. §§ 251(c)(2)(D), 251(c)(3); *see also id.* § 251(c)(2)(C) (interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself").

itself. Accordingly, BellSouth has violated the Act and the Interconnection Agreement, and ACSI is entitled to recover for these persistent failures.

ACSI is not, as BellSouth argues, seeking redress for "isolated short delays, outages and disruptions" confined to "the early days of unbundling." BellSouth Brief at 46.²³ Rather, even accepting the standard for violations asserted by BellSouth (*Id.* at 46), BellSouth's failures in provisioning unbundled loops are actionable. It is undisputed that BellSouth caused severe service disruptions to the customers involved in ACSI's November and December 1996 orders. Moreover, the gravity of these disruptions cannot be judged by a mere count of the customers involved. These orders represented ACSI's initial foray into the local services market in BellSouth territory. The disruptions and outages encountered significantly affected ACSI's goodwill at precisely the time it was trying to establish its foothold in local services, and attempts to correct the problems needlessly occupied key ACSI personnel and slowed its advancement into other cities in the BellSouth region. Significantly, these problems have caused ACSI to lose several of its initial customers in Columbus, GA.

²³ BellSouth misrepresents the testimony of Richard Robertson before the Georgia Public Service Commission as suggesting that all of ACSI's problems have been resolved. As this complaint makes clear, this is obviously not the case. BellSouth seized on one or two conciliatory statements in Mr. Robertson's testimony, but conveniently ignored a host of serious provisioning and other concerns raised in the same testimony, including: the fact that ACSI has two complaints concerning unbundled loops on file (Tr. at 1224); low volume on ACSI's unbundled loops (Tr. at 1208); random disconnects of ACSI unbundled loops (Tr. at 1211); several customers lost by ACSI due to disconnect and low volume problems (Tr. at 1214); the need for performance standards "with some kind of incentives to ensure that those standards are adhered to" (Tr. at 1217); the lack of sufficient electronic access (Tr. at 1220); concerns about BellSouth's "preferred provider" building access program (Tr. at 1259, 1274); exclusive sales agency agreements (Tr. at 1270); and contract service arrangements ("CSAs")(Tr. at 1270). Needless to say, the excerpts from Mr. Robertson's testimony do not present a fair picture of the criticism leveled at BellSouth in that testimony.

As is conclusively demonstrated by and confirmed by ACSI's continuing experiences with BellSouth, BellSouth has not corrected its provisioning problems. It to this day operates LCSCs that are incapable of handling unbundled loop orders as required by the Act and the Interconnection Agreement, and

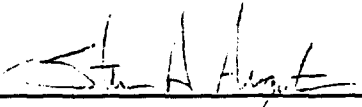
These deficiencies harm ACSI and its customers, not BellSouth, so BellSouth has little incentive to correct the problems on its own. Therefore, the Commission must take action to ensure BellSouth devotes the resources necessary to provide interconnection and provision unbundled loops at parity with that which it provides to itself.

CONCLUSION

For the foregoing reasons, and for the reasons explained in ACSI's initial brief in this docket, the Commission should grant ACSI's complaint and order the relief requested by ACSI.

Respectfully submitted,

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